

1 ANNETTE L. HURST (State Bar No. 148738)
2 DANIEL N. KASSABIAN (State Bar No. 215249)
3 ELENA M. DIMUZIO (State Bar No. 239953)
4 HELLER EHRMAN LLP
5 333 Bush Street
6 San Francisco, California 94104-2878
7 Telephone: +1.415.772.6000
8 Facsimile: +1.415.772.6268
9 E-mail: Annette.Hurst@HellerEhrman.com
10 Daniel.Kassabian@HellerEhrman.com
11 Elena.DiMuzio@HellerEhrman.com

12 Attorneys for Plaintiff
13 LAUREATE EDUCATION, INC.

14 UNITED STATES DISTRICT COURT
15
16 NORTHERN DISTRICT OF CALIFORNIA
17
18 SAN JOSE DIVISION

19 LAUREATE EDUCATION, INC.,
20 a Maryland corporation,
21
22 Plaintiff,
23
24 v.
25 TEACHSCAPE, INC., a Delaware corporation
26
27 Defendant.

Case No.: C 07-3225 RS

**PLAINTIFF LAUREATE
EDUCATION, INC.'S
MEMORANDUM:**

- (1) WITH REPLY IN SUPPORT OF
MOTION TO COMPEL
PRODUCTION OF DEFENDANT
TEACHSCAPE, INC.'S COURSE
MATERIALS; AND
(2) IN OPPOSITION TO
DEFENDANT TEACHSCAPE,
INC.'S MOTION TO STAY
DISCOVERY;**

**SUPPLEMENTAL DECLARATION
OF DANIEL N. KASSABIAN**

Judge: The Honorable Richard Seeborg
Ctrm.: 4 (5th floor)
Date: March 19, 2008
Time: 9:30 a.m.

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
BACKGROUND	2
ARGUMENT	4
I. TEACHSCAPE’S ATTEMPT TO JUSTIFY ITS REFUSAL TO PRODUCE ITS MATERIALS AFTER THE FACT SHOULD BE REJECTED	4
A. Teachscape Has Not Met Its Discovery Obligations In Response To The Requests That Laureate Moves to Compel.....	4
B. Teachscape’s Misstates The Ninth Circuit’s Clear Holding In <i>Telluride</i>	5
C. “First Available Drafts” Is Unambiguous And Reasonable.....	7
D. Teachscape Still Fails To Articulate A Factual Basis Why Producing Its Materials Is Unduly Burdensome.	9
II. A STAY OF ALL DISCOVERY IS NOT APPROPRIATE IN THIS CASE.....	9
A. Teachscape’s Motion Should Be Denied As Untimely.	9
B. Teachscape Has Not Demonstrated Good Cause For Its Requested Protective Order.....	11
C. Even If Teachscape Has Made Its Required Threshold Showing Of Good Cause, Laureate Demonstrates That The Court Should Nonetheless Exercise Its Discretion To Allow The Requested Limited Discovery.....	13
1. The discovery sought by Laureate is narrowly focused to allow for resolution of this case on its merits.	13
2. Teachscape’s effort to avoid its discovery obligations in the state court action further demonstrates that it is simply trying to avoid liability on meritorious claims through endless procedural maneuvering.	14
CONCLUSION	15

TABLE OF AUTHORITIES**Page****Federal Cases**

<i>Apple Computer, Inc. v. Franklin Computer Corp.</i> , 714 F.2d 1240 (3rd Cir. 1983).....	14
<i>Autoskill, Inc. v. Nat'l Educ. Support Sys., Inc.</i> , 994 F.2d 1476 (10th Cir.1993)	14
<i>Blankenship v. Hearst Corp.</i> , 519 F.2d 418 (9th Cir. 1975)	11
<i>Cunningham v. Hamilton County, Ohio</i> , 527 U.S. 198 (1999)	5
<i>Deutsch v. Flannery</i> , 823 F.2d 1361 (9th Cir. 1987)	13
<i>Foltz v. State Farm Mut. Auto. Ins. Co.</i> , 331 F.3d 1122 (9th Cir. 2003)	11
<i>Michaels Bldg. Co. v. Ameritrust Co., N.A.</i> , 848 F.2d 674 (6th Cir. 1988)	13
<i>Pioche Mines Consolidated, Inc. v. Dolman</i> , 333 F.2d 257 (9th Cir. 1964).....	10
<i>Rutman Wine Co. v. E. & J. Gallo Winery</i> , 829 F.2d 729 (9th Cir. 1987).....	6, 11, 12, 13
<i>Telluride Mgmt. Solutions, Inc. v. Telluride Inv. Group</i> , 55 F.3d 463 (9th Cir. 1995).....	5, 6, 8, 13
<i>Walker v. University Books, Inc.</i> , 602 F.2d 859 (9th Cir. 1979).....	8
<i>Yuhasz v. Brush Wellman, Inc.</i> , 341 F.3d 559 (6th Cir. 2003).....	12

State Cases

<i>APL Co. v. UK Aerosols Ltd.</i> , 452 F. Supp. 2d 939 (N.D. Cal. 2006).....	11
<i>Ayers v. Continental Cas. Co.</i> , 240 F.R.D. 216 (N.D. W.Va. 2007).....	9
<i>Bell Atlantic v. Twombly</i> , 127 S. Ct. 1955 (2007).....	6, 11, 12
<i>Brittain v. Stroh Brewery Co.</i> , 136 F.R.D. 408 (M.D.N.C. 1991)	10
<i>Control Data Sys. v. Infoware, Inc.</i> , 903 F. Supp. 1316 (D. Minn. 1995)	14
<i>Glass v. Beer</i> , No. 04-5466, 2007 WL 913876 (E.D. Cal. Mar. 23, 2007).....	6
<i>Nestle Foods Corp. v. Aetna Cas. & Sur. Co.</i> , 129 F.R.D. 483 (D.N.J. 1990)	10
<i>U.S. v. Am. Optical Co.</i> , 39 F.R.D. 580 (N.D. Cal. 1966)	11

1	<i>United States v. IBM Corp.</i> , 70 F.R.D. 700 (S.D.N.Y. 1976)	10
---	---	----

Federal Statutes

3	17 U.S.C. § 101	7
---	-----------------------	---

Federal Rules

5	Federal Rules of Civil Procedure 26	1, 8
6	Federal Rules of Civil Procedure 26(b).....	2, 9
7	Federal Rules of Civil Procedure 26(b)(2)(B)-(C)	9
8	Federal Rules of Civil Procedure 26(c).....	passim
9	Federal Rules of Civil Procedure 26(f)	1, 12
10	Federal Rules of Civil Procedure 34	5
11	Federal Rules of Civil Procedure 37(a).....	5, 10
12	Federal Rules of Civil Procedure 37(a)(3)(iv)	5
13	Federal Rules of Civil Procedures 30(b)	10
14	Federal Rules of Civil Procedures 9(b)	12, 13

Other Authorities

17	Schwarzer <i>et al.</i> , <u>Cal. Practice Guide: Fed. Civ. Proc. Before Trial</u> ¶ 9:294.5 (Rutter: 2007)	6
----	--	---

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Teachscape’s Opposition to Laureate’s Motion to Compel Production of Teachscape’s Course Materials (hereinafter, “Opposition to the Motion to Compel”) [Dkt. No. 73] is nothing more than a rehash of Teachscape’s Motion for a Protective Order to Stay Discovery (hereinafter, “Motion to Stay Discovery”) [Dkt. No. 69] filed a week earlier. Both are the product of Teachscape’s continuing effort, from the outset of the parties’ dispute, to prevent the production of the materials that are now identified by degree program and course in Laureate’s First Amended Complaint (“FAC”). Teachscape has engaged in a legally inappropriate program of self-help by ignoring its initial disclosure obligations under Rule 26, refusing to engage in meaningful case management discussions under Rule 26(f), refusing to meet and confer on a protective order until ordered to do so by the Court, serving specious objections to discovery, and then simply refusing to produce documents requested in response to that written discovery. At no time did Teachscape come to this Court with a motion to stay or for protective order asking the Court to bless its wholesale refusal to follow the Federal Rules of Civil Procedure. Only after its repeated flagrant violations of the Rules, and being expressly ordered by the Court to cooperate, does Teachscape now come and seek an order retrospectively blessing this inappropriate course of conduct. But, pursuant to Rule 26(c), it is now too late. Laureate respectfully submits that the Court’s institutional interest in its own rules and requirements is ill-served by allowing Teachscape to get away with this. The Court simply should not countenance this type of behavior.

Both Teachscape’s Opposition to the Motion to Compel and its Motion to Stay Discovery are unsupported by applicable law. Teachscape argues that the Court should deny the motion to compel because its program materials are sought to amend a defective complaint. But the FAC plainly meets muster. And even if it didn’t, the documents should be produced. The discovery sought here was propounded long before the initial complaint was dismissed, and Teachscape refused to produce it based on an objection—the pendency

1 of its motion to dismiss—that is invalid under Ninth Circuit precedent. That it now moves
 2 for a protective order barring such discovery based on that objection is of no consequence
 3 because the motion is untimely. Moreover, Teachscape cites no case where, as here, the
 4 information sought is solely within the defendant’s control. Contrary to Teachscape’s
 5 position, courts faced with like circumstances allow discovery on the information within
 6 defendant’s control.

7 Teachscape’s position also is unsupported by facts—it fails to provide a competent
 8 declaration explaining why the production of its course materials would be unduly
 9 burdensome pursuant to Rule 26(b), or why there is good cause to issue a protective order
 10 pursuant to Rule 26(c) to prevent that discovery in this case. In lieu of such facts, it submits
 11 empty rhetoric and inapposite legal dicta. Laureate’s Motion to Compel should be granted
 12 and Teachscape’s Motion to Stay Discovery denied.

13 BACKGROUND

14 Laureate will not respond to Teachscape’s attempt to play “he said she said” by way
 15 of Teachscape’s two briefs with duplicative Factual Backgrounds that are laden with
 16 mischaracterizations of meet and confer efforts. Precisely to avoid such disputes, Laureate
 17 proposed that the parties make an audio recording of their meet and confer sessions, but
 18 Teachscape refused. *See* Suppl. Decl. of Daniel N. Kassabian (“Kassabian Suppl. Decl.”),
 19 attached hereto, ¶ 2. So, Laureate has sought to make a clear written record of its proposals.
 20 Actions speak louder than words, and as set out below Laureate has repeatedly made
 21 reasonable proposals, in writing, to resolve this impasse. It has been met with nothing but
 22 obfuscation and delay.

23 Teachscape’s first discovery obligation—its Rule 26(a) initial disclosures—were due
 24 on September 26, 2007. *See* Order Setting Initial Case Mgmt. Conf. & ADR Deadlines
 25 [Dkt. No. 3]. Teachscape did not seek any relief or clarification from the Court as to this
 26 deadline, *even though the parties appeared before the Court on that day*. Instead, it simply
 27 did not serve its disclosures because, per Teachscape, it objected to the Court’s jurisdiction.
 28 Teachscape finally served its disclosures on December 12th, *after* Laureate moved to

1 compel them. *See* Reply in Supp. of Pls.’ Mot. to Compel Init. Disc. [Dkt. No. 47], at 3.
 2 The Court subsequently found that “it is unlikely that the Court would have accepted an
 3 argument that initial disclosures could be delayed until federal jurisdiction is established.
 4 The pendency of a motion to dismiss almost never serves to excuse compliance with initial
 5 disclosure obligations.” Order Re Disc. Disputes [Dkt. No. 56], at 2 n.2.

6 On October 15th, the parties held their Rule 26(f) conference. As shown in the Joint
 7 Case Management Statement [Dkt. No. 40], at that conference Teachscope refused to
 8 substantively discuss any case management issues, including discovery issues and the
 9 format of electronic document production, because it objected to the Court’s jurisdiction.

10 Plaintiffs’ First Set of Requests for Production were served on October 15th. *See*
 11 Decl. of Daniel N. Kassabian in Supp. of Pl.’s Mot. to Compel Def.’s Prod. of Def.’s
 12 Course Materials [Dkt. No. 62] (“Kassabian Decl.”) ¶ 5. Teachscope served its response to
 13 these requests on November 14th, in which it objected to the production of any responsive
 14 documents unless and until “the Court den[ies] Teachscope’s Motion To Dismiss [and]
 15 upon entry of an appropriate protective order.” *Id.* Ex. D, at 5-6. It nevertheless refused to
 16 discuss the terms of a protective order because it objected to the Court’s jurisdiction.
 17 Consequently, Plaintiffs filed their Motion for Entry of a Protective Order [Dkt. No. 29] on
 18 November 28th because of Teachscope’s refusal to produce any documents absent the entry
 19 of such an order. On January 22, 2008, the Court ordered that “[t]he parties . . . meet and
 20 confer to attempt to reach a stipulated form of protective order” Order Re Disc.
 21 Disputes, at 4. Thereafter, the parties submitted a Stipulated and Proposed Protective Order
 22 [Dkt. No. 58] on February 4th. Obviously, had Teachscope been willing to meet and confer
 23 earlier as it was required to do, the Stipulated Protective Order could have been entered
 24 much earlier, and it would have removed any legitimacy to Teachscope’s confidentiality
 25 objection to producing its course materials and drafts thereof.

26 Once the Court ordered the parties to confer over a protective order, Laureate sought
 27 to meet and confer regarding Teachscope’s other objection for refusing to produce its
 28 documents. Kassabian Decl. Ex. E. In doing so, Laureate *expressly in writing limited its*

1 *requests*, seeking only the documents responsive to Request for Production Nos. 1-9, 11-19,
 2 and 21, which sought the final versions and first available drafts of Teachscape's degree and
 3 course materials specified in Laureate's FAC filed on January 22nd. *Id.* Ex. F. Teachscape
 4 refused, confirming that it would not produce these materials absent an order by this Court,
 5 thereby necessitating Laureate's filing of its Motion to Compel Production of Teachscape's
 6 Course Materials ("Plaintiff's Motion to Compel") [Dkt. No. 61].

7 Teachscape thereafter filed its Motion to Dismiss Laureate's First Amended
 8 Complaint [Dkt. No. 66] on February 8th, and in it argued that Laureate's inability to
 9 review Teachscape's degree / course materials precluded Laureate's ability to bring a
 10 copyright infringement action. Teachscape then finally filed a Motion to Stay Discovery on
 11 February 13th, *three months after* its formal responses to Laureate's Requests and only
 12 when forced to do so as a cross-motion to Laureate's Motion to Compel.

13 Still, in a further reasonable effort to resolve the current impasse between the parties,
 14 on February 19th Laureate offered *expressly in writing* to pay copying costs and
 15 Teachscape's reasonable expenses of up to \$5000 to produce the materials subject to
 16 Laureate's Motion to Compel, and Laureate further offered to produce its copyrighted
 17 materials at its own cost. *See* Supp. Kassabian Decl. Ex. 1. Teachscape rejected this offer.
 18 *See id.* Ex. 2. Laureate's *conduct* demonstrates that it is willing to take reasonable measures
 19 to respond to Teachscape's concerns, while at the same time pursuing its lawful right to
 20 protect its intellectual property. Teachscape's *conduct* demonstrates that it will do anything
 21 to suppress and conceal the drafts of its course materials.

22 ARGUMENT

23 I. TEACHSCAPE'S ATTEMPT TO JUSTIFY ITS REFUSAL TO PRODUCE 24 ITS MATERIALS AFTER THE FACT SHOULD BE REJECTED

25 A. Teachscape Has Not Met Its Discovery Obligations In Response To The 26 Requests That Laureate Moves to Compel.

27 In its Opposition to the Motion to Compel, Teachscape argues that it has complied
 28 with its discovery obligations because, on November 14, 2007, it served a response to the
 Requests for Production. Def.'s Opp'n to Mot. to Compel, at 8-10. If that proposition were

1 true, any defendant could delay their obligation to produce or permit inspection under Rule
 2 34 indefinitely by lodging an objection for any reason—even *if that reason lacked a proper*
 3 *legal basis*—and then require a order to compel production or inspection. This is contrary
 4 to Rule 34, which was revised over 25 years ago “to have it operate extrajudicially, rather
 5 than by court order” Fed. R. Civ. P. 34 *committee notes* (1970).¹ Thus, the question is
 6 not, as Teachscape contends, whether Teachscape served a response, but per Laureate’s
 7 Motion to Compel, whether Teachscape served an adequate response; that is, whether it had
 8 a legitimate objection when it stated in on November 14, 2007 that it would produce
 9 document only if the Court denied Teachscape’s motion to dismiss. *See* Kassabian Decl.
 10 Ex. D, at 5-24 & 26-27.

11 Teachscape did not have a legitimate objection. A discovery obligation—such as a
 12 responsive production of documents—is not excused because a motion to dismiss for failure
 13 to state a claim is filed or has even been granted. *See Telluride Mgmt. Solutions, Inc. v.*
 14 *Telluride Inv. Group*, 55 F.3d 463, 466 (9th Cir. 1995), *abrogated on other grounds by*
 15 *Cunningham v. Hamilton County, Ohio*, 527 U.S. 198 (1999).

16 **B. Teachscape’s Misstates The Ninth Circuit’s Clear Holding In Telluride.**

17 Teachscape’s attempt to distinguish *Telluride* by claiming it stands for a different
 18 proposition—i.e., a party must comply with a court order, and not a “bare” discovery
 19 request—is a sham argument. *See* Def.’s Opp’n to Mot. to Compel, at 9. The Ninth Circuit
 20 in *Telluride* summarized its holding at the outset by stating that: “We find the action was
 21 still pending after the dismissal of the complaint and therefore conclude that *the imposition*
 22 *of discovery sanctions for failure to appear at a deposition* was not an abuse of discretion.”
 23 *Id.* at 465 (emphasis added). Consistent with this, it upheld a discovery sanction under Rule
 24 37(a)—not a finding of contempt for the failure to comply with a court order. Indeed, a
 25 court’s order was not directly at issue on appeal. Although the district court had previously

26 _____
 27 ¹ If Teachscape’s written response alone was sufficient to comply with Rule 34, then
 28 Laureate would have no basis by which to compel. Per the Federal Rules, it does. *See* Fed.
 R. Civ. P. 37(a)(3)(B)(iv).

ordered the deposition in question “on February 11 and 12, 1993 in Telluride, Colorado,” “the attorneys agreed to continue the deposition until March. [Plaintiff] filed a notice of deposition for [defendant’s officers] to appear on March 1, 2 and 3 in Snowmass, Colorado,” but then the district court dismissed the complaint on February 22nd, which was before the noticed deposition dates. *Id.* Thus, a deposition notice—not a court order—was violated when the defendants and their attorneys failed to appear. Accordingly, the argument rejected by the Ninth Circuit was not that defendants’ non-compliance with a court order was justified, but that “after the dismissal of the complaint for lack of subject matter jurisdiction the action was dismissed *and all discovery was abrogated.*” *Id.* at 466 (emphasis added).²

Teachscape’s other cases cited in support of its refusal to produce documents are inapposite. *See* Glass v. Beer, No. 04-5466, 2007 WL 913876, *7 (E.D. Cal. Mar. 23, 2007) (denying *pro se* prisoner’s motion to compel “access to the entire confidential section of his central file” without articulating any relevancy to claim); *Bell Atlantic v. Twombly*, 127 S. Ct. 1955, 1967 (2007) (stating that “antitrust discovery can be expensive” such that a court may “insist upon some specificity in pleading before allowing a potentially massive factual controversy to proceed.”); *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) (finding that, in an antitrust case, “because the costs of discovery in such actions are prohibitive,” a defendant should not be subject to discovery until there is a “reasonable likelihood that plaintiffs can construct a claim”).

² Indeed, lead commentators also state that, per *Telluride*, such an objection is improper::

Dismissal of complaint vs. dismissal of action: Dismissal of a complaint with leave to amend is not a dismissal of the lawsuit. The action remains pending even if plaintiff has not yet filed an amended complaint. Thus, parties are still obligated to participate in discovery and to respond to court orders. [*Telluride Management Solutions, Inc. v. Telluride Investment Group* (9th Cir. 1995) 55 F3d 463, 466—fact complaint had been dismissed with leave to amend did not excuse D’s failure to appear for deposition]

Schwarzer *et al.*, Cal. Practice Guide: Fed. Civ. Proc. Before Trial ¶ 9:294.5 (Rutter: 2007)

1 **C. “First Available Drafts” Is Unambiguous And Reasonable.**

2 Teachscope also argues that “‘first available drafts’ ma[kes] no sense in the context
3 of online interactive materials” and takes issue with Laureate’s definition based on the
4 Copyright Act as “generic.” Def.’s Opp’n to Mot. to Compel, at 10. Teachscope’s feigned
5 ignorance should not serve as a basis to deny Laureate’s Motion to Compel. Unless
6 Teachscope publishes and distributes unedited, first versions of all its materials, there must
7 necessarily be earlier iterations / work product of these materials.

8 The “earliest available drafts” of Teachscope’s materials comprise the document or
9 thing first created that resulted in a responsive, final degree or course material,³ where
10 “created” is defined under the Copyright Act as:

11 when it is fixed in a copy . . . for the first time; where a work is prepared over
12 a period of time, the portion of it that has been fixed at any particular time
13 constitutes the work as of that time, and where the work has been prepared in
different versions, each version constitutes a separate work.

14 17 U.S.C. § 101. The application of this definition to “online interactive materials” is
15 straightforward because these online materials did not appear out of thin air. There must be
16 some document that is itself “fixed”—i.e., static—such that the first version of such a
17 document would be responsive. Similarly, for audiovisual materials, there must be a script
18 of some sort showing what Teachscope intended its audiovisual material to be before
19 creating the final product, because that final product could not exist without any planning.
20 As for more traditional materials, like quizzes, assignments, etc., these documents must

21 _____
22 ³ Teachscope attempts to create a distinction without a difference with respect to “Plaintiffs
23 [sic] repeated use the term ‘Teachscope’s’ degree programs . . . [because] Teachscope never
24 was and never has been an accredited university authorized to issue any degree.” Opp’n to
25 Mot. to Compel, at 6 n.7. Laureate’s reference is to the programs by Teachscope for the
26 purposes of obtaining a degree by an accredited university. Teachscope cannot dispute that
27 it developed and advertised such degree *programs*. See Suppl. Kassabian Decl. ¶ 5 & Ex. 3
28 (“Teachscope has partnered with Marygrove College to offer online master’s degrees”).
Thus, there can be no argument—and Teachscope raises no real dispute—as to what
constitutes *Teachscope’s* final degree and course *program* materials, because these are the
materials that Teachscope provides to Marygrove students and staff. See Pl.’s Mot. to
Compel, at 1.

1 have some revision process such that there are earlier iterations. To the extent Teachscape's
2 course materials comprise articles and texts authored by third parties, there must be some
3 kind of an initial draft submitted to Teachscape for its approval, and there is nothing vague
4 or burdensome about producing it.

5 The objection that the term "first draft" cannot be understood is specious.
6 Teachscape knows what it has. All discovery requires counsel and client to make
7 reasonable judgments about what documents are responsive and must be produced. Once
8 produced, if there is a problem it can be discussed. If Teachscape is truly concerned that it
9 is not producing the right document, then it can tell Laureate (and the Court) what versions
10 it does have and let Laureate choose. Teachscape simply wants to suppress the documents.

11 Moreover, like its misreading of *Telluride*, Teachscape misstates the significance of
12 the Ninth Circuit's holding in *Walker v. University Books, Inc.*, 602 F.2d 859 (9th Cir.
13 1979). The plaintiff in *Walker* identified the blueprints of the final cards as infringing
14 because the defendants' attorney produced them in response to a charge of infringement
15 based on defendants' promotional materials. *See id.* at 861. Thus, the facts of *Walker* do
16 not support Teachscape's position that its drafts are irrelevant and should not be produced
17 because Laureate cannot specify them as infringing. To the contrary, *Walker* demonstrates
18 that Teachscape's improper refusal to produce drafts may result in its successful (and
19 entirely inappropriate) avoidance of liability for hidden copyright infringement, which is
20 Teachscape's ultimate goal. Teachscape's liability for intermediate copying is set out in
21 detail in Laureate's Opposition to the Motion to Dismiss the FAC, and is not repeated here.
22 Suffice to say that the drafts themselves are also the basis for the claims, and even if they
23 weren't, they would be plainly relevant under Rule 26 because they go directly to the
24 elements of access and factual copying in the final versions.

25 In sum, Teachscape's attempt to curtail its potential liability by attempting to limit
26 discovery to only its final materials should be rejected.

D. Teachscope Still Fails To Articulate A Factual Basis Why Producing Its Materials Is Unduly Burdensome.

Laureate's Motion to Compel notes that Teachscope has failed to provide specific information as to how Laureate's requests are burdensome, despite that requirement being set forth in the Federal Rules. *See* Fed. R. Civ. P. 26(b)(2)(B)-(C) & *committee notes* (2006). Teachscope still fails to meet this burden in opposition; it does not even cite to Rule 26(b), let alone address the factors therein. Instead, Teachscope confirms its reason for refusal is that "any discovery" is unduly burdensome. Def.'s Opp'n to Mot. to Compel, at 10. This all-or-nothing approach is an improper basis to limit discovery because it is contrary to Rule 26(b). Indeed, Teachscope's refusal to produce its course materials, when Laureate offered to pay for the production and simultaneously offered to produce its own materials at its own cost, demonstrates that Teachscope lacks any real burden as required by Rule 26(b) to curtail discovery. *See* Suppl. Kassabian Decl. Exs. 2 & 3.

II. A STAY OF ALL DISCOVERY IS NOT APPROPRIATE IN THIS CASE

Because Teachscope's Motion to Stay Discovery is for a protective order pursuant to Rule 26(c), the burden is on Teachscope to demonstrate good cause for a stay, and the Court has broad discretion to refuse it. *See* Def.'s Mot. to Stay Disc., at 5-6. What Teachscope seeks here is a protective order *denying all discovery in the case*. To obtain such an order, Teachscope was obliged to meet and confer and make such a motion on a timely basis. By waiting until Laureate's Motion to Compel had already been filed, Teachscope has failed to meet this fundamental procedural requirement. Moreover, even if timely, the Motion to Stay Discovery should be denied because Teachscope has failed to meet the good cause standard, or because Laureate has rebutted Teachscope's showing of good cause.

A. Teachscope's Motion Should Be Denied As Untimely.

Teachscope's decision to simply wait to seek a protective order until Laureate moved to compel renders its Motion to Stay Discovery untimely. As stated most recently in *Ayers v. Continental Casualty Co.*, 240 F.R.D. 216 (N.D. W.Va. 2007):

1 Federal Rule of Civil Procedure 26(c) does not contain any explicit time limit
 2 for filing a motion for a protective order. There are, however, implicit
 3 limitations providing a motion must be timely. *Brittain v. Stroh Brewery Co.*,
 4 136 F.R.D. 408, 413 (M.D.N.C. 1991). ***Motions for a protective order must***
 5 ***be made before or on the date the discovery is due.*** *United States v. IBM*
 6 *Corp.*, 70 F.R.D. 700, 701 (S.D.N.Y. 1976). A party's untimeliness may be
 7 excused if "there is no opportunity to move for a protective order." *Nestle*
 8 *Foods Corp. v. Aetna Cas. & Sur. Co.*, 129 F.R.D. 483, 487 (D.N.J. 1990).

9 *Id.* at 221-22 (emphasis added); *see also United States v. IBM Corp.*, 70 F.R.D. 700, 701
 10 (S.D.N.Y. 1976) ("Such motions under Rule 26(c) must be served before the date set for
 11 production."). The Ninth Circuit rule is at least as strict, if not more so. In *Pioche Mines*
 12 *Consolidated, Inc. v. Dolman*, 333 F.2d 257 (9th Cir. 1964), the Ninth Circuit affirmed Rule
 13 37(a) sanctions against a defendant for failing to comply with a notice of his deposition,
 14 even though the defendant had filed a motion to quash the deposition notice pursuant to
 15 Rule 30(b)—now Rule 26(c)—and did not appear on that basis. In so holding, it stated that
 16 "it is for the court, not the deponent or his counsel, to relieve [the defendant] of the duty to
 17 appear." *Id.* at 269.

18 Teachscape not only had no order excusing production on November 14, 2007, it did
 19 had not even bothered to file a motion. Teachscape's Motion to Stay Discovery filed three
 20 months later on February 13, 2008 and only in response to Laureate's Motion to Compel,
 21 plainly is untimely. When Teachscape used the same tactic of not complying with other
 22 discovery—its initial disclosures—until faced with a motion, the Court warned Teachscape
 23 that "the more appropriate course of action for Teachscape to take would have been either
 24 to adhere to the original deadline or to seek relief from the Court" Order Re Disc.
 25 Disputes [Dkt. No. 56], at 4. Teachscape has not heeded the Court's admonition at all, and
 26 has dismissed the import of that order because "the Court was expressly discussing
 27 Teachscape's 'initial disclosures obligations.'" Opp'n to Mot. to Compel, at 9. The Court
 28 should deny Teachscape's Motion to Stay Discovery because, under these circumstances,
 granting such a motion would simply condone behavior by defendants like Teachscape to
 halt the case whenever they feel like it.

1 **B. Teachscope Has Not Demonstrated Good Cause For Its Requested**
 2 **Protective Order.**

3 Teachscope has a “heavy burden” to show good cause for the issuance of a protective
 4 order to stay discovery. *See Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir.
 5 1975). Teachscope cites *dicta* regarding the burdens of discovery from *Bell Atlantic, supra*,
 6 in support of Teachscope’s reason why there is good cause in this case. *See* Def.’s Mot. to
 7 Stay Disc., at 5. That *dicta*, however, is not a substitute for what Teachscope is required to
 8 show under Rule 26(c). “A party asserting good cause bears the burden . . . of showing that
 9 specific prejudice or harm will result if no protective order is granted.” *Foltz v. State Farm*
 10 *Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1130 (9th Cir. 2003). Moreover, “the fact that the
 11 production of documents may involve inconvenience and expense is not alone a sufficient
 12 reason for refusing discovery which is otherwise appropriate.” *U.S. v. Am. Optical Co.*, 39
 13 F.R.D. 580, 586 (N.D. Cal. 1966) (denying motion to quash subpoena *duces tecum* as
 14 “unduly oppressive and burdensome because it would necessitate the examination of large
 15 quantities of documents.”).

16 Teachscope’s Motion to Stay Discovery, like its Opposition to the Motion to
 17 Compel, is notable for what it lacks in support: a competent declaration showing exactly
 18 what “undue burden or expense” Teachscope faces. *See* Part 0, *supra*. Instead, Teachscope
 19 relies on inapposite legal authority and *dicta*. Specifically, Teachscope relies on *Rutman*
 20 *Wine, supra* and *APL Co. v. UK Aerosols Ltd.*, 452 F. Supp. 2d 939, 945 (N.D. Cal. 2006)
 21 for the proposition that courts may disallow discovery for the purpose of amending a
 22 complaint in order to state a claim. *See* Def.’s Mot. to Stay Disc., at 7. In *Rutman Wine*,
 23 however, the court upheld the denial of discovery by finding that “the costs of discovery in
 24 antitrust actions are prohibitive. . . . It is sounder practice to determine whether there is *any*
 25 *reasonable likelihood that plaintiffs can construct a claim* before forcing the parties to
 26 undergo the expense of discovery.” *Rutman Wine*, 829 F.2d at 738 (emphasis added). In
 27 this case, Laureate has amply demonstrated a reasonable likelihood that it can construct a
 28 claim regardless of Teachscope’s Motion to Dismiss the FAC, and thus Teachscope’s

1 reliance on *Rutman Wine* and its progeny is misplaced.⁴

2 Moreover, in *Rutman Wine* and the cases citing to it in denying discovery, the courts
 3 were not faced with a situation where the defendant had exclusive control of the
 4 information. Instead, they were presented with very broad and burdensome discovery
 5 prospects, such as relevant market definition and injury to competition.⁵ *See id.* at 732.
 6 Such issues are historically known to be the subject of years of expensive, endless, and
 7 burdensome discovery. Other cases, however, have distinguished the situation where, as
 8 here, the facts are relatively limited and are exclusively within defendant's control. For
 9 example, in *Yuhasz v. Brush Wellman, Inc.*, 341 F.3d 559 (6th Cir. 2003), the court upheld
 10 the refusal to amend without discovery only after finding that "nowhere in [the plaintiff's]
 11 briefs to this court does he state that [the defendant's] control is exclusive." *Id.* at 566.
 12 Jurisprudence as to a defendant's motion to dismiss for failure to state a claim, premised on
 13 plaintiff's inability to plead specific facts required under Rule 9(b), also is instructive:

14 Courts have held that the rule may be relaxed where information is only
 15 within the opposing party's knowledge. [Citations omitted] Especially in a
 16 case in which there has been no discovery, courts have been reluctant to
 17 dismiss the action where the facts underlying the claims are within the
 18 defendant's control. . . . It is a principle of basic fairness that a plaintiff
 19 should have an opportunity to flesh out her claim through evidence unturned
 20 in discovery.

21 ⁴ The Court should also ignore Teachscape's argument that Laureate filed this motion *in*
 22 *response to* the Court's dismissing of the original complaint. *See* Def.'s Mot. to Stay Disc.,
 23 at 3:26-28. It is simply not true. Laureate spent months diligently dealing with all of the
 24 roadblocks thrown up by Teachscape with respect to the Rule 26(f) conference, initial
 25 disclosures, a protective order, and taking seriously the meet and confer requirement (which
 26 Teachscape plainly did not) before Laureate could even get to the point of making a motion
 27 to compel. All of this time Teachscape kept adding to the delay by refusing to make clear
 28 statements one way or another as to its position. Finally, Laureate moved to compel at the
 earliest reasonable opportunity.

⁵ Similarly, the *dicta* in *Bell Atlantic* regarding "potentially massive fact discovery" results
 from a class action for antitrust violations against four incumbent local exchange carriers
 that provide telephone service to consumers nationwide. *See Bell Atlantic*, 127 S. Ct. at
 1962. For reasons explained above, that *dicta* is inapplicable here.

1 *Michaels Bldg. Co. v. Ameritrust Co., N.A.*, 848 F.2d 674, 680 (6th Cir. 1988); *see also*
 2 *Deutsch v. Flannery*, 823 F.2d 1361, 1366 (9th Cir. 1987) (“Rule 9(b) does not... require
 3 plaintiffs . . . to set forth facts which, because no discovery has yet occurred, are in the
 4 exclusive possession of the defendants.”) (citation omitted).

5 Thus, *Rutman Wine* is distinguishable from the present case on multiple grounds.
 6 *Rutman Wine* on its face proposed a standard of plausibly constructing a claim which is met
 7 here. Moreover, this is not an antitrust case; the discovery sought here is limited, and
 8 Laureate offered to pay for it. This does not provide a basis for meeting the heavy burden
 9 to stay discovery entirely.

10 **C. Even If Teachscape Has Made Its Required Threshold Showing Of Good**
 11 **Cause, Laureate Demonstrates That The Court Should Nonetheless**
 12 **Exercise Its Discretion To Allow The Limited Discovery Requested.**

13 **1. The discovery sought by Laureate is narrowly focused to allow for**
 14 **resolution of this case on its merits.**

15 Laureate has moved to compel narrowly focused discovery—i.e., the production of
 16 the degree / course materials that are the subject of its FAC. *See generally* Pl.’s Mot. to
 17 Compel Prod. In its Motion to Stay Discovery, Teachscape tries to turn the Court’s focus
 18 away from this narrow discovery by pointing to an attorney declaration containing empty
 19 rhetoric about meet and confer efforts and also pointing to the number / volume of all of
 20 Laureate’s discovery. *See* Mot. to Stay Disc., at 4; Decl. of Gayle M. Athanacio in Supp. of
 21 Def.’s Mot. to Stay Disc. [Dkt. No. 70]. That discussion about discovery not at issue,⁶ is
 22 not a substitute for good cause required pursuant to Rule 26(c) to prevent production of the
 23 materials sought in Laureate’s Motion to Compel. The Court should ignore Teachscape’s

24 ⁶ Teachscape’s attempt to characterize all the discovery propounded as unwieldy disregards
 25 the fact that Laureate propounded its discovery in a comprehensive fashion at the outset of
 26 this suit so that Teachscape could conduct the majority of its information and document
 27 collection efforts efficiently in the first instance. So, in reality, discovery was propounded
 28 in a way to minimize Teachscape’s overall burden—assuming that Teachscape would
 participate in the discovery process as required by the Federal Rules and the ruling of the
 Ninth Circuit in *Telluride*.

1 bluster and focus on the discovery sought to resolve the parties' current impasse.

2 In so doing, the Court should find that Teachscape any showing toward good cause is
 3 rebutted with respect to the discovery sought by Laureate's Motion to Compel, in view of
 4 the goal of the Federal Rules to resolve disputes on their merits, and the furtherance of the
 5 public interest in preventing the misappropriation of the skills, creative energies, and
 6 resources which are invested in copyrighted works. *See Apple Computer, Inc. v. Franklin*
 7 *Computer Corp.*, 714 F.2d 1240, 1255 (3rd Cir. 1983); *Autoskill, Inc. v. Nat'l Educ. Support*
 8 *Sys., Inc.*, 994 F.2d 1476, 1499 (10th Cir.1993); *Control Data Sys. v. Infoware, Inc.*, 903 F.
 9 Supp. 1316, 1326 (D. Minn. 1995).

10 **2. Teachscape's effort to avoid its discovery obligations in the state**
 11 **court action further demonstrates that it is simply trying to avoid**
 12 **liability on meritorious claims through endless procedural**
 13 **maneuvering.**

14 Teachscape also now is undertaking efforts to avoid discovery in the state court case
 15 by Laureate's former co-plaintiff and subsidiary, Canter & Associates, LLC ("Canter"). *See*
 16 *Mot. to Stay Disc.*, at 6 n.3. Teachscape has no interest in expending this much effort to
 17 hide these course materials other than trying to avoid liability. These are not the crown
 18 jewels. They are not even trade secrets. Some of them have been and eventually all will be
 19 published to quite a few people. But Laureate to date has been unable to pursue lawful
 20 means, other than court process, of obtaining the course materials—draft or final. That
 21 Teachscape will seek a stay of state court proceedings while at the same time seeking a stay
 22 of discovery here evinces that Teachscape is not interested in efficiently litigating its
 23 disputes with either Laureate or Canter, but that Teachscape's true motive is the delay
 24 and/or prevention of resolving any claim on its merits.⁷ While there is little to no cost in

25 ⁷ In view of its latest actions, that Teachscape is engaging in delay tactics, and not the
 26 efficient resolution of the parties' dispute on the merits can no longer be debated.
 27 Moreover, it has been over a year and a half since Teachscape's entry into the marketplace
 28 though its wrongful conduct. The passage of time only benefits Teachscape by allowing it
 to cement a place in the market that it entered into on an accelerated basis by improperly
 leveraging Laureate's and Canter's intellectual property.

1 Teachscape producing its materials and designating the production for both federal and state
 2 actions (for which Laureate has offered to pay Teachscape), Teachscape prefers to expend
 3 its resources to evade discovery in both. The Court should put an end to Teachscape's
 4 gamesmanship, which will apparently extend to two courts if not stopped, so that efficiency
 5 truly can be achieved.

6 Accordingly, the Court also should reject out of hand Teachscape's argument that the
 7 decision by Canter to pursue its state law claims in state court, and propounding discovery
 8 related to those claims, somehow demonstrates a "desire to unduly burden, annoy and
 9 harass Teachscape, and engage in 'scorched earth' discovery and litigation, without regard
 10 for judicial resources or Teachscape's legitimate rights." *Id.* at 6. Teachscape fails to
 11 appreciate that Canter's suit is in accord with Teachscape's wish that Canter's "state claims
 12 [] be brought in San Francisco County, where Teachscape is located" Def.'s Mot. to
 13 Dismiss and/or Strike Compl. [Dkt. No. 6], at 15. Teachscape should not be complaining
 14 about Canter seeking discovery in Teachscape's preferred venue—especially when this
 15 Court has noted that those claims have been sufficiently pled. *See* Kassabian Decl. Ex. A,
 16 at 2.

17 CONCLUSION

18 Laureate's Motion to Compel should be granted, and Teachscape's Motion to Stay
 19 Discovery should be denied.

20 Dated: February 27, 2008

Respectfully submitted,

21 HELLER EHRMAN LLP

22 By /s/ DANIEL N. KASSABIAN

23 Attorneys for Plaintiff

24 LAUREATE EDUCATION, INC.

SUPPLEMENTAL DECLARATION OF DANIEL N. KASSABIAN

I, Daniel N. Kassabian, declare:

1. I am an associate with the law firm of Heller Ehrman LLP (“Heller Ehrman”), counsel to Plaintiff Laureate Education, Inc. (“Laureate”). The factual assertions herein are made on my personal knowledge and, if called upon to do so, I could and would testify competently thereto.

2. On January 30, 2008, counsel for the parties met and conferred by telephone regarding a stipulated protective order, as required by the Court’s Order re Discovery Disputes, and with the intent by Laureate to meet and confer about Teachscape’s objections to Laureate’s Requests for Production. During that call, counsel for Teachscape, Gayle Athanacio, became obstinate with respect to terms of the stipulation and made excuses as to why Teachscape could not discuss Laureate’s Requests for Production at that time, despite having been sent letter setting forth Laureate’s position on January 23rd. In response, counsel for Laureate, Annette Hurst, asked Ms. Athanacio if the conference call could be recorded from that point forward. Ms. Athanacio refused this request.

3. Attached hereto as Exhibit 1 is a true and correct copy of a letter e-mailed and mailed by me to Ms. Athanacio on February 19, 2008.

4. Attached hereto as Exhibit 2 is a true and correct copy of a letter e-mailed to me from Ms. Athanacio on February 21, 2008.

5. Attached hereto as Exhibit 3 is a true and correct printout from Teachscape’s web site (http://www.teachscape.com/html/ts/nps/online_masters_degree_programs.html) on today’s date.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct of my own knowledge and that this declaration is executed on February 27, 2008 in San Francisco, California.

/s/ Daniel N. Kassabian

EXHIBIT 1

HellerEhrman^{LLP}

February 19, 2008

Daniel N. Kassabian
Daniel.Kassabian@hellerehrman.com
Direct +1 (415) 772-6098
Direct Fax +1 (415) 772-1796
Main +1 (415) 772-6000
Fax +1 (415) 772-6268

Via E-mail and U.S. Mail

26930.0004

Gayle M. Athanacio, Esq.
Sonnenschein Nath & Rosenthal LLP
525 Market Street, 26th Floor
San Francisco, CA 94105-2708

Re: *Laureate Education, Inc. v. Teachscape, Inc.*, No. 07-3225 RS (N.D. Cal.)

Dear Gayle:

I write to resolve the impasse between the parties with the following offer by Laureate:

- Laureate will pay Teachscape's reasonable costs, including collection, copying, and production costs of up to \$5,000 for the production of the degree / course materials (or providing access to online materials) that are now the subject of Laureate's motion to compel;
- Teachscape will produce its final degree / course materials on or by February 27th, and will produce its first available drafts of these same materials on or by March 5th;
- Laureate will produce its materials set forth in the First Amended Complaint, as registered with the Copyright Office, on or before February 27th at its own expense;
- Laureate will withdraw its pending motion to compel the production of these materials as moot;
- Laureate will agree not to seek further discovery in this action unless and until the Court rules on Teachscape's pending motion to dismiss or that motion is withdrawn;
- Teachscape will withdraw its motion for protective order to stay discovery as moot;
- The parties will stipulate and ask the Court to postpone the hearing on Teachscape's motion to dismiss to April 2nd, so that the parties are given sufficient opportunity to review each other's productions and evaluate their respective positions; and
- The parties' stipulation to postpone the hearing will also contain all the other terms of this agreement if accepted so that the Court may enforce its terms if needed.

We believe that \$5,000 is a fair estimate of the most Teachscape would incur in reasonable costs to produce these documents. That estimate is based on the following:

Heller Ehrman LLP 333 Bush Street San Francisco, CA 94104-2878 www.hellerehrman.com

HellerEhrman_{LLP}

Gayle M. Athanacio, Esq.
February 19, 2008
Page 2

(1) there is no cost to allowing access of final online materials because it would only entail giving us a username/password; (2) the cost of producing all final physical materials cannot be greater than \$1350, which is the sum of the \$75 per course "Materials Fee" charged by Marygrove for each of the 16 courses that comprise Teachscape's degree programs at Marygrove; and (3) the cost of producing copies of the first available drafts of these materials will not be greater than the remainder of the \$5000. For example, around 35 hours of time by a paralegal or Teachscape employee, at a reasonable charge of \$100 per hour, could be used to collect, copy, and produce these earliest available drafts. With respect to what is meant by a final and earliest available draft of a Teachscape degree / course material, I refer you to my letter dated January 31, 2008, which addresses that subject. Finally, the parties' productions will be subject to the Federal Rules pertaining to discovery, and may be produced subject to the Stipulated Protective Order to the extent appropriate.

We look forward to your prompt response to this offer no later than tomorrow.

Best regards,



Daniel N. Kassabian

cc: Annette L. Hurst, Esq. (*via e-mail only*)
Elena M. DiMuzio, Esq. (*via e-mail only*)
Christine Lepera, Esq. (*via e-mail only*)

EXHIBIT 2



525 Market Street
26th Floor
San Francisco, CA 94105-2708
415.882.5000
415.882.0300 fax
www.sonnenschein.com

Gayle M. Athanacio
415.882.5077
gathanacio@sonnenschein.com

February 21, 2008

VIA EMAIL AND U.S. MAIL

Daniel Kassabian, Esq.
Heller Ehrman LLP
333 Bush Street
San Francisco, CA 94104

Re: ***Laureate v. Teachescape; Canter & Associates LLC v. Teachescape:***

Dear Dan:

I have received your February 19, 2008 correspondence in which you discuss a possible resolution to the longstanding dispute over the mutual exchange of allegedly infringing and infringed materials that are at the center of Plaintiffs' claims against Teachescape. At the outset, I must say that it is extremely frustrating to Teachescape that you make a proposal only after Teachescape was forced to file its motion for protective order and the day before its response to Laureate's motion to compel is due. It is equally frustrating that your proposal makes no mention of the parallel state court action that your clients filed in which they essentially "split" the federal action into two suits. While Teachescape had no choice but to file its opposition to the motion to compel (not having sufficient time to consider your proposal before then), Teachescape would like nothing more than to move this dispute onto a different track for resolution. Unfortunately, your proposal will not work. Our reasoning is set forth below, as is what we believe is an appropriate manner in which to put the matter to rest.

As reflected in Teachescape's motion for protective order and motion to dismiss Laureate's first amended complaint, Teachescape believes Plaintiffs have not brought suit (now suits) against Teachescape in good faith and with a proper inquiry. Formal discovery to allow Laureate to "fish" for evidence of supposed wrongdoing is inappropriate. We appreciate you disagree with Teachescape's contention; however, to date, nothing in your communications or the motions which you have filed have led Teachescape to conclude its position is incorrect. That you continue to reject Teachescape's offer for an "apples to apples" exchange of final course material, and in your February 19th correspondence apparently condition any such exchange on Teachescape's agreement to produce in two weeks "first available drafts," only serves to reinforce Teachescape's genuine concern that Plaintiffs are not proceeding in good faith.



Daniel N. Kassabian

February 21, 2008

Page 2

Further, your proposal presupposes that Teachscape is not being candid when it says it really does not understand what you want in "first available drafts" and why Plaintiffs claim to need them in order to see if they have a case. Further, your presumptions regarding the burden of trying to gather the materials/information is incorrect. There are other issues we could raise but at this juncture and due to obvious time constraints, we cannot raise them here.

Having said this, as was evident in our correspondence to you almost a year ago, Teachscape genuinely desires to put to rest Plaintiffs' concerns and avoid further litigation between the parties. As such, Teachscape offers the following proposal:

- Teachscape will provide Plaintiffs with full online access to the allegedly offending Marygrove course offerings and Plaintiffs will provide Teachscape will full copies of all copyrighted materials (including audiovisual materials). This exchange will take place on or before March 3rd (as you know, I am tied up in depositions in New York next week.)
- Within one week of the exchange of final course materials, the parties will sit down to discuss in light to the above exchange what "drafts" Plaintiffs want. At that time, the parties will agree upon what are the sought after "drafts," a date for production of those documents, and the appropriate cost shifting.
- The parties will agree to stipulate to an immediate stay of both the *Laureate v Teachscape* and *Canter v. Teachscape* actions. (Alternatively, Canter can dismiss without prejudice its state court action and Teachscape will agree to not assert any defense or make any claim based upon that dismissal.) To the extent necessary, Teachscape and Laureate will withdraw their respective discovery motions and continue the hearing on Teachscape's motion to dismiss.
- If after the production of the above materials, Laureate agrees there is no substantial similarity between the allegedly infringed and infringing materials, Laureate will agree to immediately dismiss with prejudice the federal action.
- As soon as possible, but in no event more than one month after the exchange of the materials, the parties agree to either resolve their dispute themselves or conduct a mediation before an agreed-upon third party with the goal to settle the entire dispute between all the parties. Should the mediation prove unsuccessful, the parties agree to jointly stipulate that the stays be lifted.



Daniel N. Kassabian

February 21, 2008

Page 3

As the above suggests, this proposal will only work if the parties jointly proceed in good faith and believing that the other parties will do the same. Despite its concerns, Teachscape is willing to make this commitment. We hope that Plaintiffs are as well and that you agree that the above proposal represents the most practical and expedient way to resolve our differences and avoid unnecessary further litigation.

We look forward to your response to Teachscape's proposal and would welcome the opportunity to discuss the matter further.

Very truly yours,

SONNENSCHN NATH & ROSENTHAL LLP

A handwritten signature in dark ink, reading "Gayle M. Athanacio". The signature is written in a cursive, flowing style.

Gayle M. Athanacio

EXHIBIT 3



Login Name

Password

[Login problem?](#)



LOG-IN

[Subscribe to E-Newsletter](#)

Our Graduate Programs

Online Master's Degree Programs

[Curriculum](#)

[Tuition](#)

[Payment Options](#)

[Financial Aid](#)

[Admissions](#)

[Frequently Asked Questions](#)

Online Graduate Courses

[University Partners](#)

[Online Graduate Course
Catalogue](#)

[Interactive Tour](#)



[Home](#) > [Our Graduate Programs](#) > [Online Master's Degree Programs](#) >

Online Master's Degree Programs

An Online Master's. Growing Your Future.

Teachscape has partnered with Marygrove College to offer online master's degrees to support teachers in their career advancement and professional development. To become an excellent educator, ongoing personal and professional learning are critical to your success. These exceptional graduate study programs advance your career and your professionalism by keeping you on top of the latest research in education, helping you apply what you learn to become more effective in your classroom situation.



A History of Excellence

Known for excellence in teacher education since 1914, Marygrove College, located in Detroit, Michigan, has been a pioneer in offering convenient and practical master's degree programs in a variety of distance-learning formats. With more than 20,000 students, Marygrove College has an excellent reputation among

teachscape® Quick Form

Complete this Quick Form to receive more information about Teachscape's services. Someone will be in touch with you soon.

Name

District/School

Title

Street Address

City, State, Zip

Phone Number

Email Address

Type comments or requests here

[Home](#) [Our Methodology](#) [Our Services](#) [Our Technology Tools](#)

[Our Graduate Programs](#) [About Us](#) [Contact Us](#)

Teachscape | Copyright © 2008 | All Rights Reserved

> Web Design by C3i3 Interactive <